IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6356 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESHBHAI PALSING GURKHA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/02/2000

ORAL JUDGEMENT

#. Heard Ms.S.G.Patel, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 7-7-1999 passed by

respondent No. 2 - The Commissioner of Police, Baroda against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicate that three prohibition cases are registered against the petitioner in between 21-1-1998 to 12-3-1999 at different police stations and in each case, the country made liquor was seized. That all three cases are pending for trial. Over and above, that three witnesses, on assurance of their anonymity have given their statement dated 16-6-99, 18-6-99, and 18-6-99 against the petitioner regarding the anti social activities of the petitioner, wherein, incidents alleged to have occurred on 10-6-99, 15-5-99 and 11-4-99 are stated. That on the basis of the said material, the respondent No. 2 - The Commissioner of Police, Baroda as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that a representation dated 16-7-1999 was sent to the detaining authority with request to forward the same to the concerned authorities and to supply laboratory report in respect to three registered prohibition cases etc. It is submitted at bar that though the representation dated 16-7-1999 was received by the detaining authority and forwarded to the State Government, neither of the authorities has supplied the said documents or FSL report as claimed vide representation and as such, valuable right of the petitioner to make effective representation having been affected, the continued detention of the petitioner has become illegal.

#. The respondent No : 2 - The Commissioner of Police, Baroda has filed affidavit dated 2nd February 2000, wherein, vide para 9, it is stated on oath that the representation of the petitioner was received on 17-7-1999 and was immediately forwarded to respondent No

: 1 - State of Gujarat. That no affidavit has been filed on behalf of the respondent No : 1 but the learned AGP on instructions from original file has stated at bar that said representation was decided on 28th September 1999 and was communicated to the detenu. However, the learned AGP could not point out the fact that the FSL report as claimed by the detenu whether was supplied or directed to be supplied to the detenu or not ?

#. In view of the above said finding of fact, it is apparent that on account of non supply of vital documents like FSL report despite the demand made by the representation on behalf of the detenu, the constitutional mandate under Article 22(5) having been violated, the continued detention of the petitioner has become illegal and thereby the impugned order is required to be quashed and set aside.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 7-7-99 passed by respondent No.2 - The Commissioner of Police, Baroda against the petitioner is hereby quashed and set aside. The petitioner - DINESHBHAI PALSING GURKHA is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 28-2-2000 [A.K.Trivedi, J.]

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